IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 19436 of 2007(L)

PETITIONER:

M/S PHILIPS INDIA LIMITED.,
NOW PHILIPS ELECTRONICS INDIA LIMITED,
W.ISLAND, COCHIN-3.
REP. BY S.VANUVAMALAI, MANAGER-CORP. FISCAL.

BY ADV. SRI.JOSE JOSEPH.

RESPONDENTS:
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1. **THE ASST. COMMISSIONER II,**
   SPECIAL CIRCLE, COMMERCIAL TAXES,
   MATTANCHERRY.

2. **THE DEPUTY COMMISSIONER(APPEALS),**
   COMMERCIAL TAXES, ERNAKULAM.

3. **THE DEPUTY COMMISSIONER,**
   COMMERCIAL TAXES, MATTANCHERRY.

4. **THE INSPECTING ASST. COMMISSIONER,**
   COMMERCIAL TAXES, MATTANCHERRY,
   COCHIN-2.

BY GOVT. PLEADER SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.19436 of 2007

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Dated this the 26th day of June, 2007.

JUDGMENT

Heard counsel for the petitioner and the Government Pleader. The petitioner challenged sales tax assessment for 1998-1999 in two rounds of appeal. The Tribunal remanded the case to the first appellate authority. While the matter was pending, Deputy Commissioner suo moto revised the assessment under Section 35 of the KGST Act against which petitioner has not filed any appeal. In remand proceeding, the appellate authority again remanded the case to the officer. According to the petitioner, without giving effect to the remand order, the officer issued fresh proceeding pursuant to order issued by the Deputy Commissioner under Section 35 against which regular appeal filed is pending. The petitioner's further grievance is short-credit of around Rs.10 lakhs out of which Rs.4 lakhs and odd was paid during pendency of appeal before the Tribunal and around Rs.5 lakhs remitted by the awarder in the name of the petitioner with STO, Mattancherry and another payment vide Ext.P1 is also not given credit. In the circumstances, W.P. is disposed of with the following directions.

1. The petitioner will produce details of payments made including the

payments made during pendency of appeal and certificate of deduction and remittance made by the awarder before the Assessing Officer for verifying the same and the officer is directed to give credit for full payments. This should be done within two weeks from date of production of details along with copy of this judgment.

2. The officer will thereafter go through the appellate order issued pursuant to remand by the Tribunal and if assessment requires any modification pursuant to the order in appeal, he will modify the revised assessment issued pursuant to order issued by the Deputy Commissioner under Section 35 and if petitioner wants, petitioner can file appeal against the same only to ensure that revision of assessment is in terms of appellate order. The Appellate Authority in that case should hear both appeals together.

3. The petitioner is directed to remit one third of the balance tax and interest due after revision of assessment and after giving credit for payments as above within one month from date of issue of revised order. If one third of the balance is paid, two third of the remaining demand will stand stayed till disposal of appeal. The appellate authority is directed to take up the appeals and dispose of the same within three months from the date of making payment as above. It is open to the petitioner to file fresh revision

or amend the revision petition filed against demand of interest, if officer makes any modification of the earlier order pertaining to interest. The revisional authority will dispose of the revision within three months from the date of making payment of one third of the demand as stated above. Revenue recovery proceedings will remain stayed for six weeks from now and if one third is paid, recovery proceedings will remain stayed till disposal of appeal and revision as stated above.

C.N.RAMACHANDRAN NAIR
Judge

pms